

Statutory School Attendance Procedures

Penalty Notice Protocol

**Version 13
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Directorate for Children & Families

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1 RATIONALE

DfE Guidance

1.1 The Statutory School Attendance Procedures is produced by Manchester Local Authority from the DfE guidance and government legislation. It is important to refer to this when considering statutory school attendance procedures to ensure full compliance.

1.2 This guidance summarises the legal powers and duties that govern school attendance and explains how they apply to local authorities, head teachers, school staff, governing bodies, pupils and parents.

1.3 These requirements are contained in:

- The Education Act 1996 - sections 434(1)(3)(4)&(6) and 458(4)&(5)
- The Education (Pupil Registration) (England) Regulations 2006
- The Education (Pupil Registration) (England) (Amendment) Regulations 2010
- The Education (Pupil Registration) (England) (Amendment) Regulations 2011
- The Education (Pupil Registration) (England) (Amendment) Regulations 2013
- The Education (Pupil Registration) (England) (Amendment) Regulations 2016

The Manchester Inclusion Strategy

1.4 The Manchester Inclusion Strategy has been developed to help the Local Authority, early years' settings, schools, Post 16 providers and other services work in a more coherent way to support young people to attend well and/or to reduce the risk of exclusion. The strategy provides an outline of approaches, interventions and services, to support all Manchester settings, schools and Post 16 providers to ensure the needs of all young people are understood and addressed in order to support good attendance and prevent the use of exclusion wherever possible.

1.5 The offer is made of four identified strands of intervention:

Strand 1 – Universal Provision and a whole school/education setting vision and ethos

Strand 2 – Early Identification of children presenting challenging and school refusing behaviours

Strand 3 – Alternative Provision or Specialist Support fully embracing the individual needs of any young person who requires a different kind of support and / or setting

Strand 4 - Ensuring Best Practice in the Use of Exclusion with the aim of reducing the use of fixed term and permanent exclusion for incidents of persistent disruptive behaviour by ensuring that the root causes of such emerging behaviours are understood and appropriately addressed as early as possible through early intervention and innovative multi-agency planning.

The document itself can be found at:

https://secure.manchester.gov.uk/directory_record/376574/manchester_inclusion_strategy/category/1479/childrens_services.

Local Authority Intervention

1.6 The authorised officer for issuing penalty notices is Anthony Turner, Lead for Attendance and Exclusions, Directorate for Children and Families.

1.7 Regular and punctual attendance at school or academy is a legal requirement under Section 444 of the Education Act 1996. It is essential that parent/carers maximise the educational opportunities available for their children and provide the best possible start in life.

1.8 Under previous legislation, parent/carers of a registered pupil whose child failed to attend school/academy regularly and whose absence was unauthorised, committed an offence for which prosecution was the only available sanction. Penalty notices were introduced as an early intervention strategy under the Antisocial Behaviour Act 2003. Penalty notices provide an alternative to prosecution by allowing parent/carers an opportunity to discharge their liability for the offence. A penalty notice requires payment of £120 within 28 days, reduced to £60 if paid within the first 21 days. If the penalty notice remains unpaid by the end of 28 days, the Local Authority (LA) will consider the commencement of proceedings for the offence to which the notice relates. Any such prosecution is not for the non-payment of the notice but is for failure to ensure regular attendance at school/academy.

1.9 Penalty notices should be used to address unauthorised absence and are to be used to enforce regular and punctual attendance.

1.10 The Local Authority authorises and issues all penalty notices which should be used where a parent/carer is capable of securing an improvement in their child's school/academy attendance but is unwilling to do so.

A separate penalty notice may be issued to each parent/carer for each child who is not regularly attending school/academy. Schools and Academies should be able to demonstrate how parent/carers have been made aware of the possible consequences if they remove their child from education during term time without authorisation.

2 PENALTY NOTICE PROTOCOL

Legislation

2.1 Section 23 of the Antisocial Behaviour Act 2003 introduced new powers for designated Local Education Officers, Head teachers/Principals (and Deputy or Assistant Head teachers/Principals authorised by them) and the police to issue penalty notices for unauthorised absence from school/academy.

2.2 The Education (Penalty notices) (England) Regulations 2004 came into force on 27 February 2004. These were replaced by The Education (Penalty Notices) (England) Regulations 2007.

2.3 Penalty notices must be issued in a manner that conforms to all requirements of the Human Rights Act and all Equal Opportunities Legislation.

2.4 For the purposes of the Protocol, the legal definitions of 'parent/carers' are:

- Any natural parents, whether married or not
- Any parent/carer who, although not a natural parent, has parental responsibility as defined in the Children Act (1989) for a child or young person
- Any person who, although not a natural parent, has care of a child or young person.

2.5 If a penalty notice remains unpaid and is then referred for consideration of prosecution, lawyers must take into account the 'Code for Crown Prosecutors' which sets out a two-stage test that they should follow when they make decisions on cases:

Is there enough evidence against the defendant?

When deciding whether there is enough evidence to charge, prosecutors must consider whether evidence can be used in court and is reliable. Prosecutors must be satisfied there is enough evidence to provide a 'realistic prospect of conviction' against each defendant.

Is it in the public interest to bring the case to court?

A prosecution will usually take place unless the prosecutor considers that the public interest factors tending against prosecution outweigh those tending in favour.

Communications with parent/carers where statutory action is to be considered

2.6 Schools and Academies are expected to monitor the attendance of all pupils on their roll. Where a pupil records unauthorised absence or is planning a period of unauthorised absence then the school/academy should;

- be able to evidence communications and policies such as, school/academy attendance policy, parent/carer contract, meetings, home visits, newsletters, leaflets, website information, whole school letters and individual letters regarding the pupil's attendance
- as good practice consider the attendance record of any other siblings, including siblings from other schools/academies of statutory school age and whether co-ordination of communications or action is required
- ensure the school/academy attendance leader has given approval to request statutory action.

2.7 It is important that any school/academy actions are accurately recorded on the pupil's chronology. This may be used to provide evidence to the courts at a later date.

Safeguarding & truancy sweeps

2.8 Where a pupil is stopped on a truancy sweep and there is no valid reason for the absence from school/academy, the Local Authority will consider sending a letter to the parent/carers warning them that if further unauthorised absence is recorded then it may result in a penalty notice being issued, however in appropriate circumstances a penalty notice may be issued instead. Prior to a notice being issued the local authority will consult with the school/academy to agree this action.

Leave of absence in term time

2.9 An amendment has been made to The Education (Pupil Registration) (England) Regulations 2006 which came into force 1st September 2013.

2.10 The new Regulations remove all reference to family holidays and extended leave as well as the statutory threshold of ten school days. The amendments make clear that head teachers may not grant any leave of absence during term time unless the teacher/principal deems the leave request to have exceptional circumstances. In those circumstances the authorised leave may be granted and only the head teacher/principal can determine the number of school days a child can be away from school/academy.

2.11 It is the responsibility of the parent/s/carers to check directly with their child/ren's school for holiday term dates prior to booking any leave. If parent/s/carers wish to book leave in advance they need to be aware the school calendar may change and it is the parents/carers responsibility to obtain written and verbal confirmation that the school holiday calendar will remain the same.

2.12 Where parents/carers live separately consideration will be made as to the appropriateness of issuing a penalty notice to each parent. Each case will be assessed individually.

2.13 A school/academy should be able to demonstrate they communicated with parent/carers informing them of the possible consequences if taking unauthorised leave of absence.

2.14 It is good practice that schools and academies communicate closely before decisions are made for leave of absence during term-time. It is not appropriate for schools/academies to remove pupils from roll for leave of absence in term time where siblings at different schools/academies may record unauthorised absence.

Excessive delayed return from leave of absence or extended leave of absence

2.15 Where leave of absence has been granted by the school/academy, parent/carers should be informed by the school/academy in writing (if time allows) of an agreed return date and clearly outline the possible outcomes if the pupil fails to return to school/academy on the date stated.

2.16 The Pupil Registration Regulations 2013 also enable schools and academies to delete from their roll pupils who have failed to attend on the agreed return date and the school/academy have complied with the Children Missing Education and off rolling procedures.

Punctuality

2.17 Schools/academies should investigate the reasons for lateness and offer advice and support where appropriate. Guidance for Schools and Academies and Local Authorities Absence and Attendance Codes state the register of pupils should close 30 minutes after the register opens. Where the arrival time is after the close of registration period the late mark, code U, an unauthorised absence, should be recorded. The same process applies when requesting and issuing a penalty notice.

3 ISSUING PENALTY NOTICES

Criteria for requesting a penalty notice

3.1 Schools and Academies should be able to demonstrate that parent/carers are aware of the possible consequences of statutory action by way of an Attendance Policy and other communications as previously stated. The school/academy may request a Penalty Notice from the Local Authority by completing the Statutory Action Request form. All Manchester schools and academies may request statutory action if;

- a parent/carer has not been subject to previous statutory action. Regardless of the level of a pupil's attendance a Penalty Notice will always be the first consideration in these circumstances.
- consideration will also be made where there has been previous statutory action taking into account time lapse, different pupil, different school etc.
- there is evidence of unauthorised absence recorded on the pupils register and for any number of sessions;
- a pupil does not return on the first day that a school re-opens where the previous school week is less than 5 days due to bank holidays, training days and following school holidays etc;
- the request is within a period of 15 school days since the last day of absence;
- the period of absence is not being considered for proceedings under Section 444 (1) or (1A) of the Education Act 1996;
- the issue of a penalty notice does not conflict with other intervention strategies in place by the Local Authority or by other agencies where the circumstances are known to the Local Authority. Agreement from supporting agencies that statutory action is appropriate must be sought.

Evidence of Intervention

3.2 The intervention actions requested to be evidenced and included in the chronology of the referral prior to submission of a request for statutory action are noted below:

- At least a 6-week period of attendance records;
- Full implementation of school attendance policy and interventions;
- Full implementation of school support teams and assessment of individual need;
- Utilisation of relevant aspects of the Manchester Anxiety-Based School Avoidance guidance using trauma-informed intervention approaches;
- Offer of phased-return for an agreed period of time to overcome anxiety;
- Offer to meet with the next of kin and the child to discuss the absence and any concerns (minutes to be taken of the meeting);
- Offer of an Early Help Assessment – if accepted, agreed actions to support an improvement in attendance;

Considering statutory action requests

3.2 Upon receipt of the statutory action request the Local Authority will investigate each request and will use its discretion to decide whether to issue a penalty notice. Alternatively, upon consideration of the application the Local Authority may deem it appropriate to take one of the following actions:

- Advise school/academy to monitor for a further period
- Issue a Local Authority warning letter to parent/carers

- Offer a formal Caution
- Advise school/academy to refer to supporting agencies
- Advise school/academy a direct prosecution is required

3.3 The local authority will consider all requests within ten school/academy days of receipt and, where appropriate will authorise the issue of a penalty notice to each parent/carer by first-class post.

3.4 The Local Authority will monitor all penalty notices issued and inform schools/academies of the payment/non-payment or further action authorised by the local authority.

Payment of penalty notices

3.5 The required payment of a penalty notice is £120 to be paid within 28 days, reduced to £60 if paid within the first 21 days. The payment in full of the required amount discharges a parent/carers' liability for the period of unauthorised absences for which the penalty notice was issued. The Local Authority retains this revenue to cover enforcement costs.

Non-payment of penalty notices

3.6 If payment is not received within 28 days the Local Authority will consider prosecution for the unauthorised absence to which the penalty notice relates.

3.7 Non-payment of a penalty notice may result in action being taken by the Local Authority, which may include a further warning letter or a formal caution. The instigation of legal proceedings for unauthorised absence from school/academy under Section 444 (1) or s444 (1A) of the Education Act 1996 may also be considered where it is deemed to be appropriate. In these circumstances, the school/academy must provide the Local Authority with a signed school/academy attendance record and witness statement to be used as evidence in the prosecution. A witness statement would need to be provided by either the appropriate member of staff, who may be expected to attend court to give oral evidence should the parent/carers defend the prosecution. If appropriate, a further witness statement can be provided by any relevant member of staff to include further support/communication with the parent/carers(s). In certain circumstances the Local

3.8 Authority may also undertake a PACE Caution (Police and Criminal Evidence) interview prior to a decision to prosecute being made.

Procedure for withdrawal

3.9 Once a penalty notice has been issued, it can only be withdrawn by the Local Authority in the following circumstances:

- It has been established that the notice was issued in error.
- The circumstances of the absence do not comply with the conditions of Manchester City Council's Protocol and the Education (Penalty Notices) (England) Regulations 2007.
- Only the Local Authority can withdraw a Penalty Notice if it considers there are exceptional circumstances that warrant a withdrawal of the penalty notice. School/academy or parent/carers may be required to provide evidence to the local authority for a full assessment to be considered.
- The parent/carer provides evidence that would constitute a statutory defence.

Monitoring and review

3.10 The Local Authority will monitor and evaluate the outcomes of penalty notices in terms of improvement in school/academy attendance, payment and any subsequent legal action. The use of the notices will be reviewed at regular intervals and the enforcement strategy of the Local Authority may be amended accordingly.

4 CONTACTS

4.1 The School Attendance & Exclusion Team can be contacted via:

- 0161 234 5255
- school.attendance@manchester.gov.uk